

1. During the night of December 9, 2007, the Satellite Camp of the Federal Correctional Institution in Otisville, New York (“FCI Otisville,” “the prison camp,” or “the camp”) experienced a snow and ice storm. Transcript of Deposition of Maurice Napoli (“Napoli Tr.”) at 39:10-12, 39:21-22; 41:15-21 (a copy of the pages of the Napoli Tr. that are cited by the Government are attached as Exhibit 1 to the Declaration of Bertrand Madsen, dated May 10, 2010 (“Madsen Decl.”));

Transcript of Deposition of Jeffrey North ("North Tr.") at 17:1 (a copy of the pages of the North Tr. that are cited by the Government are attached as Exhibit 2 to the Madsen Decl.); Transcript of Deposition of David Heyman ("Heyman Tr.") at 72:7-14 (a copy of the pages of the Heyman Tr. that are cited by the Government are attached as Exhibit 3 to the Madsen Decl.); Meteorological Records on File in the National Climatic Data Center, Asheville, North Carolina ("Weather Reports") at 21 (showing freezing rain ("FZRA") starting at 6:07 p.m. on December 9, 2007); *id.* at 22 (freezing rain); *id.* at 25 (showing freezing rain ending at 2:13 a.m. on December 10, 2007) (the Weather Reports, and a certification from Thomas F. Ross, Records Custodian, Data Administrator of the National Climatic Data Center, are attached as Exhibit 4 to the Madsen Decl.).

2. On the morning of December 10, 2007, inmates in charge of snow and ice removal at the prison camp (the "Orderlies") were working to clear the snow and ice from the grounds around the camp, applying sand and salt to the parking lot areas, and salt to the sidewalks around the building in which the inmates were housed (the "Main Building"). North Tr. at 25:18-27:7; Napoli Tr. at 45:4-13, Exhibit 2 to Napoli Tr.
3. On the morning of December 10, 2007, inmates had placed salt on the sidewalks by the Main Building. North Tr. at 26:20-23, 27:4-7.
4. From approximately 10:30 a.m. to approximately 11:15 a.m., the temperature rose to above-freezing levels and, at approximately 11:15 a.m., the temperature dropped to below-freezing levels again. Weather Reports at 25.


5. At approximately 11:30 on the morning of December 10, 2007, Plaintiff slipped and fell on a patch of ice on a sidewalk along the Main Building. *See* Heyman Tr. at 75:21-76:4, 77:18-79:6; 97:24-98:9, 100:25-101:8, Exhibit 2 to Heyman Tr.
6. No Government employee had notice of the patch of ice on which Plaintiff fell before his fall. Declaration of Jeffrey North, dated May 6, 2010, at ¶ 3; Declaration of Ted Overton, dated May 6, 2010, at ¶ 5.
7. The ice patch upon which Plaintiff fell may have been caused by a rise in the temperature above freezing between 10:30 a.m. and 11:15 a.m. on December 10, 2007, followed by a drop in temperature below freezing after 11:15 a.m. Weather Reports at 25.

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Respectfully submitted,

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